IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 29162 of 2007

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKKUAMR BHAVSANGBHAI CHAUDHARY - Petitioner(s)
Versus
THE DIRECTOR OF MUNICIPALITIES & 14 - Respondent(s)

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Appearance :
MR AJ SHASTRI FOR MR PRAKASH K JANI for Petitioner
MR PATHIK ACHARYA, AGP for Respondent(s) : 1 - 2

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 29/11/2007

ORAL JUDGMENT

1. The present Writ Petition, filed under Article 226 of the Constitution of India, raises an important question of law, namely, whether the petitioner, who is the President of the Mehsana Nagarpalika,

(“Nagarpalika” for short) incurred the disqualification under Section 11(1)(h) of the Gujarat Municipalities Act 1963 (“the Act” for short), for having more than two children, after his election to the said post.

2. In order to adjudicate upon this issue, it will be useful to set out the brief facts of the case. As stated in the petition, the petitioner filed his nomination form to be elected as a member (councillor) of the Mehsana Nagarpalika from Ward No.9. The general elections of Mehsana Nagarpalika took place on 11.12.2005. The petitioner was declared elected as a councillor on 13.12.2005. After his election as a councillor, a meeting of the elected councillors of the Nagarpalika was held on 25.12.2005, for the purpose of electing the President and Vice President of the Nagarpalika. In the election which took place during the said meeting, held on 25.12.2005, the petitioner came to be elected as President of the Nagarpalika and began to function as such. As per the averments made in the petition, the respondents No.3 to 15 submitted an application

dated 27.8.2007 to the District Collector, Mehsana, stating that the petitioner has become the father of a third child, who was born on 8.7.2007 and, therefore, he has incurred disqualification in view of the provisions of Section 11(1)(h) of the Act, and should not be continued as a councillor of the Nagarpalika. Accordingly, a request was made by the said respondents to disqualify the petitioner, by resorting to proceedings under Section 38, read with the provisions of Section 11(1)(h) of the Act. A copy of the application submitted by the said respondents is to be found at Annexure-D to the petition.

It appears that thereafter, a Writ Petition, being Special Civil Application No.25701 of 2007, came to be filed in the High Court by one Sagarbhai Kalyanbhai Rayka, and six others, who, as stated in the petition, was a leader of the rival party, seeking a direction against the Collector, Mehsana, to initiate proceedings against the petitioner under Section 38(2) of the Act. In the said petition, the present petitioner was impleaded as respondent No.4. During the pendency of this petition, the Collector,

Mehsana, exercising powers under Section 38(1) of the Act, passed an order dated 22.10.2007, which is annexed as Annexure `H' to the petition, removing the petitioner as a councillor of the Nagarpalika and declaring the seat of the petitioner as member (councillor) of Ward No.9, and as President of the said Nagarpalika, to have fallen vacant. As a consequence thereof, Special Civil Application No.25701 of 2007 was disposed of by the order of this Court dated 23.10.2007 (Coram: Ravi R.Tripathi, J.) in the following terms:

> *"Learned Assistant Government Pleader Ms.Krina Calla places on record a copy of the order dated 22nd October 2007 passed by the Collector, Mehsana. In view of that order, the grievance of the petitioners does not survive.*
>
> *Mr.Prakash K. Jani, learned advocate for respondent no.4 requested that the Court may clarify that it will be open for respondent no.4 to challenge the said order in accordance with law as provided under section 38 of the Gujarat Municipalities Act, 1963 an appeal to the State Government provided against the said order. It goes without saying that the order passed against respondent no.4 can always be challenged*

by respondent no.4 in accordance with law. As and when such challenge is made before the competent authority the same will be considered by the competent authority in accordance with law without being influenced by the fact that order was passed during the pendency of petition before this Court. The Special Civil Application is disposed of as not surviving. Notice is discharged."

A perusal of the averments made in the present Writ Petition disclose, that feeling aggrieved by the order dated 22.10.2007, passed by the Collector, Mehsana, the petitioner filed an appeal under Section 38(4) of the Act before the appellate authority, i.e. the Director of Municipalities, who is arrayed as respondent No.1 herein, along with an application for stay of the implementation and execution of the order dated 22.10.2007. It is stated in the petition that the aforesaid appeal and the stay application were filed on 25.10.2007, but, as the matter was not taken up for hearing by the concerned authority, the petitioner filed Special Civil Application No.28487 of 2007, praying for directions to the respondent No.1, to hear and decide the appeal as well as the stay application filed by him. This Court, vide order

dated 2.11.2007, directed the respondent No.1 to decide the matter as expeditiously as possible but not later than 6.11.2007. Special Civil Application No.28487 of 2007 was, thereafter, finally disposed of by order of this Court dated 19.11.2007, as the direction given in order dated 2.11.2007 had been complied with and the Director of Municipalities had taken a decision on the appeal filed by the petitioner by his order dated 6.11.2007.

By passing the aforesaid order dated 6.11.2007, the respondent No.1 has rejected the appeal and application for stay of the petitioner, and has confirmed the order dated 22.10.2007 passed by the Collector, Mehsana. It is this order, dated 6.11.2007, that is impugned in the present petition.

3. I have heard Mr.A.J.Shastri, learned counsel appearing for Mr.P.K.Jani, learned counsel for the petitioner, at length and in great detail and have considered the entire material on the record of the petition, as well as the arguments advanced by Mr.Shastri at the Bar, which shall be referred to

hereafter.

4. Certain undisputed facts of the case are required to be set out at this stage, for a better understanding of the chronology of events. The elections of the Nagarpalika took place on 11.12.2005. The petitioner was declared elected as a councillor of the said Nagarpalika on 13.12.2005. He was elected as President of the Nagarpalika on 25.12.2005. The third child was born to the wife of the petitioner on 8.7.2007. An application dated 27.8.2007 was made by the respondents No.3 to 15 to the Collector, Mehsana, stating that the petitioner has incurred disability and cannot be continued as a councillor of the Nagarpalika, in view of the birth of his third child on 8.7.2007.

5. It would also be relevant to refer to the provisions of Section 11(1)(h) of the Act which have been inserted by the Gujarat Local Authorities Law (Amendment) Act, 2005 (Guj.17 of 2005) and which have come into force with effect from 4.8.2005. The relevant extract from Section 11(1)(h) of the Act

reads as under:

> *"11. General disqualifications for becoming a councillor. Vacation of seat. Decision of State Government in case of disputes –*
>
> *(1) No person may be a councillor -*
>
> *... ... ...*
>
> *(h) who has more than two children:*
>
> *Provided that a person having more than two children on the date of commencement of the Gujarat Local Authorities Laws (Amendment) Act, 2005 (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause, so long as the number of children he had on the date of such commencement does not increase.*
>
> *Provided further that a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification under this clause.*
>
> *... ... ..."*

From the above provision of law, it is clear

that the disqualification as a councillor for having more than two children came into effect from the commencement of the amendment, that is, from 4.8.2005, which is before the election of the petitioner as a councillor of the Nagarpalika took place.

6. Before I proceed to discuss the elaborate submissions made by Mr.A.J.Shastri, on behalf of the petitioner, it would be in the fitness of things to clarify, that during the course of his arguments, Mr.Shastri has very fairly stated, that he is not pressing the ground taken in the Writ Petition to the effect that there is no proof regarding the birth of the third child of the petitioner. This being the position, the Court is only called upon to adjudicate whether the provisions of Section 11(1)(h) of the Act will be applicable to the case of the petitioner and whether the impugned order is illegal and unsustainable in law, for the reasons advanced by the learned counsel for the petitioner.

7. Mr.A.J.Shastri has broadly summarized the

contentions raised in the petition and has submitted as under:

(i) The first contention raised by Mr.Shastri is that the appellate authority has failed to consider that the provisions of Section 11(1)(h) of the Act are not attracted in the case of the petitioner, inasmuch as he did not have more than two children at the time of filing his nomination form to contest the election for the Nagarpalika. According to him, the amendment vide which Section 11(1)(h) was inserted, came into effect on 4.8.2005, but its provisions were not incorporated in the nomination form, therefore, the disqualification envisaged by the said Section will not hit the petitioner. It is submitted by the learned counsel for the petitioner that the provision envisaging disqualification on the birth of a third child will be applicable from the date of filing of the nomination form and not retrospectively, that is from 4.8.2005, in the case of the petitioner. As a limb of the same argument, Mr.Shastri contends that the first proviso to Section 11(1)(h) of the Act will be applicable in the case of the petitioner since, at

the time of election, he was having only two children and in view thereof, the petitioner will not incur any disqualification, and, therefore, the impugned order should be quashed as being illegal and contrary to the statutory provisions.

(ii) The second submission advanced by the learned counsel for the petitioner is that, under Section 38 of the Act, it is the Collector who is vested with the power to decide whether a vacancy has arisen in case of disability incurred by any councillor, whereas it is contended that the proceedings were initiated by the Additional Collector, as is stated in the order dated 22.10.2007, annexed as Annexure-H to the petition, wherein it is mentioned at page 60 of the paper-book, that the show cause notice was given to the petitioner by the Additional Collector. It is argued by the learned counsel that in this view of the matter, it cannot be said that the Collector has applied his mind to the proceedings from the initial stage. He submits that, since the proceedings were initiated by the Additional Collector who issued a show cause notice to the petitioner, though finally

culminated by the Collector, the principles of natural justice have not been followed since, it was the Additional Collector who heard the petitioner pursuant to the show cause notice and not the Collector. It is further submitted that the Collector could not have delegated his powers to issue a show cause notice and examine the explanation of the petitioner to the Additional Collector and therefore, the impugned order of the Collector should be quashed and set aside. In support of this submission, reliance is placed on **(M/s) Shree Ram Packaging & Another v. Union of India & Another - 1990(2) GLH 343** and **(The) Anant Mills Co.Ltd. (Under Liquidation) v. Municipal Corporation for the city of Ahmedabad and Others - 1993(2) GLH 897**.

(iii) The third submission advanced by the learned counsel for the petitioner is, that under Section 38 of the Act, the Collector has the power to declare that there is a vacancy in case of disability incurred by any councillor, but he is not vested with power to declare that the seat of the President of the Municipality has fallen vacant, pursuant to such

disability. Therefore, the order passed by the Collector declaring the seat of the President as vacant, is without any authority of law on this ground.

(iv) The fourth submission made by the learned counsel for the petitioner is, that although by virtue of amendment in the Act, whereby Section 11(1)(h) was inserted, the disqualification for becoming a councillor has been incorporated, no such corresponding amendment has been carried out in Section 38 of the Act and the Collector has not been vested with power to declare the seat of the President vacant as Section 11(1)(h) of the Act deals with disqualification incurred by the councillor and not the President, and, therefore, the action of the concerned authority is bad on this ground as well.

(v) Lastly, it is contended that the application of the respondents No.3 to 15, upon which the proceedings against the petitioner were initiated, was motivated by political rivalry and was made with a mala fide intention. It is also argued that the

District Collector has succumbed to the pressure exerted by the private respondents and has proceeded to decide against the petitioner under the same. Mr.Shastri submits that this aspect of the matter has not been examined by the appellate authority in its true perspective and on this, as well as the above mentioned grounds, the Writ Petition deserves to be allowed and the impugned order set aside.

No other submissions, except as recorded hereinabove, have been advanced by the learned counsel for the petitioner.

8. Before dealing with the above submissions, it would be pertinent to refer to a judgment of the Supreme Court in a matter regarding disqualification of a Sarpanch of a Gram Panchayat, for having more than two children, in violation of the provisions of the concerned statute. In **Javed and others v. State of Haryana – 2003(8) SCC 369,** the vires of Sections 175(1)(q) and 177(1) of the Haryana Panchayati Raj Act 1994, were challenged. The said provisions disqualified a person having more than two living

children, from holding the specified offices in the Panchayats. The Supreme Court upheld the constitutional validity of the impugned provisions, and held as under:

> *"59. In our view, a statutory provision casting disqualification on contesting for, or holding, an elective office is not violative of Article 25 of the Constitution.*
>
> *60. Looked at from any angle, the challenge to the constitutional validity of Section 175 (1) (q) and Section 177(1) must fail. The right to contest an election for any office in Panchayat is neither fundamental nor a common law right. It is the creature of a statute and is obviously subject to qualifications and disqualifications enacted by legislation. It may be permissible for Muslims to enter into four marriages with four women and for anyone whether a Muslim or belonging to any other community or religion to procreate as many children as he likes but no religion in India dictates or mandates as an obligation to enter into bigamy or polygamy or to have children more than one. What is permitted or not prohibited by a religion does not become a religious practice or a positive tenet of a religion. A practice does not acquire the sanction of religion simply because it is*

permitted. Assuming the practice of having more wives than one or procreating more children than one is a practice followed by any community or group of people, the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does.

61. If anyone chooses to have more living children than two, he is free to do so under the law as it stands now but then he should pay a little price and that is of depriving himself from holding an office in Panchayat in the State of Haryana. There is nothing illegal about it and certainly no unconstitutionality attaches to it."

9. Admittedly, in the present petition, the constitutional validity of Section 11(1)(h) of the Act has not been challenged and neither has the legislative competence of the State of Gujarat, to enact the legislation prescribing disqualification from holding the position of a councillor in a municipality, if that person has more than two children after the coming into force of the amendment, been called into question. It is in this

background, that the points raised by the petitioner will have to be adjudicated.

10. There is no dispute that the petitioner has become the father of a third child on 8.7.2007, i.e. after the coming into effect of the provisions of Section 11(1)(h) of the Act. The petitioner does not challenge the constitutional validity or the vires of the said provision of law but only disputes its applicability, in his case.

11.1 Regarding the first point raised by the petitioner that, on the date of filing the nomination form, i.e. on 26.11.2005, he did not have more than two children and therefore, the rigours of Section 11(1)(h) of the Act will not apply to him, this submission cannot be accepted. As already mentioned earlier, the amendment in the Act by which Section 11(1)(h) was inserted, came into effect on 4.8.2005, i.e. before filing of the nomination form by the petitioner. The provisions of the statute prescribing disqualification on the birth of a third child became effective from this date. Merely because the

provisions of Section 11(1)(h) of the Act or the disqualification contained therein was not mentioned in the nomination form will not eclipse the statutory requirement or act as a bar to the operation of the statutory provisions contained in Section 11(1)(h) of the Act. Admittedly, the nomination form for the election of councillor of the Nagarpalika, which was held on 11.12.2005, was also filed by the petitioner, after the coming into force of the amendment prescribing the disqualification. A nomination form is a part of the electoral procedure and cannot override the provisions of a statute. The contention of the learned counsel for the petitioner that the provision envisaging disqualification on the birth of a third child cannot be made applicable retrospectively, that is, before filing of the nomination form, in the case of the petitioner, therefore, cannot be sustained in law. There is no retrospectivity involved, as far as the applicability of the disqualification under Section 11(1)(h) of the Act is concerned. The disqualification comes into effect from 4.8.2005 and any person who seeks to hold the office of a councillor under the Act after this

date is subject to disqualification, if the provisions of Section 11(1)(h) are violated, as specified in the statute. It has been contended that the first proviso to Section 11(1)(h) will apply in the case of the petitioner since, at the time of the election, he had only two children. A perusal of the first proviso to Section 11(1)(h) makes it abundantly clear that it will apply to a person having more than two children on the date of commencement of the Amendment Act, i.e. on 4.8.2005, and so long as the number of children that person has on that date does not increase, the disqualification under the proviso will not apply. In plain words, if, on 4.8.2005 a person has more than two children, he shall not be disqualified as long as the number of children he has on that date, does not increase. Admittedly, the petitioner did not have more than two children on 4.8.2005 but had only two children on that date. Therefore, the exemption envisaged by the proviso will not be applicable to him.

11.2 The second submission advanced by the learned counsel for the petitioner, is that under

Section 38 of the Act, it is the Collector who is vested with power to decide whether a vacancy has arisen and the power cannot be delegated to the Additional Collector. This submission of the learned counsel for the petitioner also, does not merit acceptance, for the reason that the order dated 22.10.2007 shows that it has been passed by the Collector, who is the competent authority, after due application of mind, and after taking into consideration the entire material on record. It is clearly mentioned by the Collector, in his order dated 22.10.2007, that the Additional Collector was entrusted to collect the relevant material and undertake a preliminary inquiry in view of the contention of the petitioner that the nomination form for the election of councillor of the Nagarpalika, did not contain any requirement to disclose the information regarding the number of children the candidate had on that date. However, it is clear from the said order, that the proceedings under Section 38(2) of the Act have been undertaken by the competent authority and the Collector, after giving an opportunity of hearing to the petitioner and

taking into consideration his submissions and the material on record, has taken a decision in this regard. The record reveals that the power under Section 38(2) has been exercised by the competent authority under the Act, that is, by the Collector and there is no delegation by him, of this power, to the Additional Collector. A fact-finding preliminary inquiry, in order to ascertain whether the petitioner had become the father of a third child or not may also have been necessitated since, initially, the petitioner denied the birth of a third child. The preliminary inquiry made by the Additional Collector does not amount to delegation of power to him and cannot be considered an illegality, or even an irregularity, so as to vitiate the order passed by the Collector, after hearing the parties and taking into consideration the entire material on record. The order dated 22.10.2007 reveals that the Collector has applied his mind to the issue before him while passing the said order. It cannot, therefore, be said that the power available to the Collector under Section 38 of the Act has been delegated by him to the Additional Collector. The challenge raised by the

petitioner on this ground, therefore also must fail. Moreover, the order of the Collector was carried in appeal by the petitioner to the Director of Municipalities, who has rejected the appeal of the petitioner vide order dated 6.11.2007, after hearing the petitioner and dealing with all the contentions raised by him, including this one. In view of this position, the judgments relied upon by the learned counsel for the petitioner in (M/s) Shree Ram Packaging & Another v. Union of India & Another (supra) and (The) Anant Mills Co.Ltd. (Under Liquidation) v. Municipal Corporation for the city of Ahmedabad and Others (supra) are not relevant, in the facts and circumstances of this case.

11.3 The third ground raised by the petitioner is that under Section 38 of the Act, the Collector, has power to declare that there is vacancy only in case of a disability incurred by a councillor, and not by a President of the Municipality, which post was held by the petitioner. I am afraid, this submission of the learned counsel for the petitioner, is totally unsustainable in view of the statutory

provisions. It is an accepted position that a person who is successful in contesting an election of a Municipality will initially have to be elected as a councillor. The Act does not prescribe a direct election to the post of President of the Municipality. The petitioner was initially declared elected as a councillor of Mehsana Nagarpalika on 13.12.2005. Thereafter, a meeting of the elected members of the Nagarpalika took place on 25.12.2005 and it was in this meeting that the petitioner came to be elected as President of the Nagarpalika. No person can become the President of the Nagarpalika without first being elected as a councillor. If the scheme of the Act is examined, this position will become clear. It is evident from Section 31, that the Municipality shall be presided over by a President, who shall be elected by the councillors from amongst themselves, in the manner prescribed by Rules made by the State Government, and that the Vice President will also be similarly elected for each Municipality. Section 32 of the Act provides that after the general election to a Municipality, the Collector shall call the first general meeting of the Municipality for the

election of the President and the Vice President within the prescribed period and in this meeting, no business other than the election of the President and the Vice President shall be transacted. Further, Section 33(1)(a) provides that the term of office of the President of the Municipality constituted upon the general election held after the commencement of the Gujarat Municipalities (Amendment) Act, 2000, shall be two and a half years. From the above provisions of law, it is evident that the President of the Nagarpalika can only be elected from amongst the duly elected councillors. No person, who is not a councillor can be elected as a President of the Municipality. The President of the Nagarpalika will necessarily have to hold the substantive, elected position of a councillor before he can be elected, from amongst the councillors as a President of the Nagarpalika, in a meeting especially convened for this purpose. The disqualification envisaged by Section 11(1)(h) pertains to a councillor. If the very qualification for holding the post of councillor is under challenge, being hit by the provisions of Section 11(1)(h), then there is no question of that

person holding the post of a President. Once the petitioner incurs the disqualification for having more than two children after the coming into force of Section 11(1)(h), he cannot remain a councillor and as a necessary consequence thereof, it follows that he cannot remain as a President of the said Nagarpalika. The submissions made by Mr.Shastri in this regard are not in consonance with the provisions of the statute and, therefore, not worthy of acceptance.

11.4 Regarding the fourth submission made by the learned counsel for the petitioner, to the effect that, although by virtue of amendment in the Act by insertion of Section 11(1)(h), disqualification for becoming a councillor has been incorporated but no such corresponding amendment has been carried out in Section 38 of the Act; meaning thereby that the Collector has not been vested with the power to declare the seat of the President vacant, I am of the firm opinion that such an interpretation would be contrary to the provisions of the Statute. As has already been discussed hereinabove, the petitioner

was first elected as a councillor and only thereafter, in the first general meeting of the Municipality, has he been elected as a President by inter se, internal voting amongst the councillors. The disqualification incurred by the petitioner is as a councillor. The seat occupied by him in the Municipality is as a councillor. The post of President is conferred upon him by the internal process of election, envisaged in Sections 31 to 33 of the Act. The term of the councillor of a Municipality is for a period of five years, whereas the term of the President is for the periods specified in the Act, and in this case, for two and half years. The power conferred upon the Collector under Section 38(2) of the Act to decide whether the vacancy has arisen due to any councillor becoming subject to disqualification as specified in Section 11 has rightly been conferred, keeping in view the provisions of Section 11 and the entire scheme of the Act. If the legislature had felt the need to amend Section 38, it would have done so. It is not for the petitioner to say that there should have been an amendment in Section 38 nor for the Court to decide.

As the law stands, if any councillor becomes subject to disqualification as specified in Section 11, he cannot continue as such and his office shall become vacant. The necessary consequence thereof is, that if the petitioner is not qualified to continue as a councillor due to the disqualification incurred by him, he will necessarily be discontinued as the President of the Municipality, since he is disqualified as a councillor. In the light of the above discussion, I am not in agreement with the submissions made by the learned counsel for the petitioner in this regard.

11.5 The fifth point raised by the learned counsel for the petitioner is to the effect that the application to initiate proceedings against the petitioner was filed by the respondents No.3 to 15 who are his political rivals, with an ulterior motive and with a mala fide intention. It is also contended that the District Collector has succumbed to the undue pressure exerted by these persons and has wrongly taken a decision against the petitioner, as a result of which the petitioner has been disqualified

as councillor and President and his office has been declared to have become vacant. While it may be factually correct that the application against the petitioner has been filed by the present respondents No.3 to 15 who may be the political rivals of the petitioner, this, in itself, will not establish mala fide motive or undue pressure. What is relevant is, whether the action of the competent authority, is motivated by mala fides or not. I am afraid, in the present case, the record does not reveal that the Collector has acted at the behest of the said respondents or that his action is tainted with any mala fide intention. It is a settled position of law, that a plea of mala fide has not only to be specifically pleaded, but also proved. Merely by raising the bogey of “mala fide” the petitioner cannot escape the rigours of the statute. It will be relevant to notice that in the reply given by the petitioner to the notice issued by the Collector, he has admitted in paragraph 4 thereof that his wife has given birth to a male child at her maternal home. This admission is to be found on page 47 of the paper-book. Further, in paragraph 19 of the same

document, at page 56 of the paper-book, the petitioner has stated that he has two daughters and that his wife gave birth to a third child, i.e. son, at her maternal home and the necessary formality for the registration of the birth of the third child is to be completed in the town where the birth took place. From the above admissions, it is clear that the allegations levelled in the application by the respondents No.3 to 15 are not untrue. This being the position, it cannot be said that the action of the concerned authorities in disqualifying the petitioner and declaring his seat vacant, is motivated by any ulterior motive or is tainted with the vice of mala fide. Except for a bald assertion made in the petition, there is no material on record to prove this contention of the petitioner. Therefore, the arguments of the learned counsel for the petitioner to this effect do not hold good, and cannot be accepted.

12. Before parting with this judgment, it would be pertinent to observe that the legislature has enacted the provision of law regarding disqualification on

the birth of a third child with certain aims and objects, namely, to check the growth of population in the country. The elected representatives of the municipalities, being at the grass-root level, are expected to adhere to the norms set by the legislature in this regard. It is apparent that the desire of the petitioner for a male child, in spite of already having two daughters, has resulted in his disqualification and removal as a councillor and President of the Municipality. As an ordinary citizen of the country, a person may have as many children as he desires, but if he is to hold a statutory, elective post, for which there are specific provisions regarding qualification and disqualification, his personal desires must give way to the law of the land and the requirements of public policy. If a person aspires to hold an elective, public office under a particular statute, he must be prepared to submit to the restrictions imposed upon him, by that statute. Where a statute provides for necessary qualifications, without which a person cannot offer his candidature for an elective office, the candidate for that office must fulfil those

qualifications. If he falls within the ambit of any prescribed disqualifications, it necessarily follows that he will not be qualified to contest or hold that elective, statutory office. Persons who aspire to be leaders of society, must lead by example. The very object of the statutory provision regarding disqualification on the birth of a third child is to prevent, or keep in check, the population explosion which is threatening to engulf the development of the nation. The elected representatives of the people are amenable to the law of the land and must set an example to the people whom they represent, even at the cost of some personal sacrifice.

13. As a necessary consequence of the above discussion and in the ultimate analysis, I am of the considered opinion that the impugned order passed by the respondent No.1 suffers from no legal infirmity. On the contrary, the impugned order has taken into consideration all aspects of the matter, including the provisions of the statute, after giving the petitioner an opportunity of hearing. Moreover, no legal or fundamental right of the petitioner has been

violated.

The petition is devoid of merit and is, accordingly dismissed.

(Smt.Abhilasha Kumari, J.)

(sunil)